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| 10/668,678 | 09/23/2003 | Mark J. Pettay | PAT-008D | 1052 |
| 29129 7590 04/20/2007 MICHELLE A. ZARINELLI C/O WEST CORPORATION 11808 MIRACLE HILLS DR. MAIL STOP: W11-LEGAL OMAHA, NE 68154 | | | EXAMINER SAINT CYR, LEONARD | |
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| SHORTENED STATUTORY PERIOD OF RESPONSE | | MAIL DATE | DELIVERY MODE | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/668,678

Applicant(s)

PETTAY ET AL.

Examiner

Leonard Saint-Cyr

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 23, 48, and 49 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, and 18 of U.S. Patent No. 7,191,133. Although the conflicting claims are not identical, they are not patentably distinct from each other because removing inherent and/or unnecessary limitation/step and rearranging the claims would be within the level of one of ordinary skill in the art. It is well settled that the omission of an element, e.g. "dividing the data is based upon timestamps of the panels" is an obvious expedient if the remaining elements perform the same function as before. *In re Karlson*, 136 USPQ 184 (CCPA 1963). Also note Ex

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parte Rainu, 168 USPQ 375 (Bd. App. 1969). Omission of a reference element or step whose function is not needed would be obvious to one of ordinary skill in the art.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1 – 5, 7 – 10, 12, 16 – 24, 26 – 51 are rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al., (US Patent 6,567,787).

As per claims 1, 4, 23, 48, and 49, Walker et al., teach evaluating a compliance of at least one agent reading at least one script to at least one client, the method comprising at least the following:

conducting at least one voice interact between the at least one agent and the at least one client, wherein the at least one agent follows the at least one script (“cashiers that interact with customers”; col.7, lines 9 – 26, and 46 – 60; col.1, lines 27, and 28);

evaluating)”determine whether the audio signal satisfies a predetermined criterion”) the at least one voice interaction with at least one automatic speech recognition component adapted to analyze the at least one voice interaction; and determine whether the at least one agent has adequately followed the at least one script

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("percentage of times the verbal message was spoken properly"; col.7, lines 46 –65; col.6, lines 24 – 26); and

conducting at least one voice interaction at least in part on at least one communications network (col.3, lines 40 – 56).

As per claim 2, Walker et al., further disclose that conducting at least one voice interaction involving a telemarketing agent (col.5, lines 40 – 45).

As per claim 3, Walker et al., further disclose that conducting at least one voice interaction governed by at least one script that includes text corresponding to at least one offer of at least one of goods and services (col.11, lines 30 – 35).

As per claims 5, and 24, Walker et al., further disclose that conducting at least one voice interaction at least in part on a publicly switched telephone network (col.3, lines 40 –52).

As per claim 7, Walker et al., further disclose that conducting at least one voice interaction at least in part on at least one communications network having at least one wireless component ("electric signals"; col.4, lines 23 – 29).

As per claim 8, Walker et al., further disclose that conducting at least one voice interaction at least in part on at least one telephone call (col.5, lines 40 – 45).

As per claim 9, Walker et al., further disclose conducting at least one telephone call that is initiated by the at least one client (col.5, lines 40 – 45; col.12, lines 63 – 65).

As per claim 10, Walker et al., further disclose conducting at least one telephone call that is initiated by an entity other than the at least one client (“telemarketing”; col.5, lines 40 – 45).

As per claim 12, Walker et al., further disclose performing at least one action based upon at least one result of the evaluating of the at least one voice interaction (“receive the weekly bonus earned”; col.6, lines 24 – 39).

As per claim 16, Walker et al., further disclose reviewing at least one determination of whether the at least one agent has adequately followed the at least one script (“the operator may earn \$0.10 for each percentage point of the percentage of times the verbal message was spoken properly”; col.6, lines 24 – 39).

As per claim 17, Walker et al., further disclose defining at least one score (“percentage”) at least one automatic speech recognition component (col.6, lines 24 – 39).

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As per claim 18, Walker et al., further disclose evaluating the at least one voice interaction includes evaluating a plurality of panels ("a number of transactions in which the operator participated"; col.5, lines 46 – 60).

As per claim 19, Walker et al., further disclose assigning a respective a score to each one of the panels ("percentage"; col.6, lines 24 – 32).

As per claim 20, Walker et al., further disclose comparing data representing an actual duration of at least one interaction, wherein the at least one agent reads at least one script to the at least one client, to data representing an expected duration parameter associated with the at least one interaction ("predetermined duration"; col.7, line 60; col.9, lines 6 – 12).

As per claims 21, and 22, Walker et al., further disclose dispositioning at least one interaction, wherein the at least one agent reads at least one script to the at least one client, based at least in part on comparison of data representing an actual duration of the at least one interaction to data representing an expected duration parameter associated with the at least one interaction ("predetermined duration, and time duration of the verbal message"; col.7, line 60; col.9, lines 6 – 12).

As per claim 26, Walker et al., further disclose that at least one call center that includes a plurality of agent workstations ("POS terminals"; col.3, lines 23 - 26).

As per claim 27, Walker et al., further disclose that at least one of the agent workstations includes at least a telephone and a computer terminal (col.5, lines 41 – 45).

As per claim 28, Walker et al., further disclose that said agent is a telemarketing agent (col.5, lines 41 – 45).

As per claim 29, Walker et al., further disclose that said agent is a customer service agent (col.3, line 10).

As per claim 30, Walker et al., further disclose causing at least action to be taken includes transmitting at least one signal to the at least one agent ("sound transmitted to headphone"; col.2, lines 1 – 9).

As per claim 31, Walker et al., further disclose transmitting at least one signal to at least one reviewing authority (" billing system in communication with the operator database"; col.6, lines 24 – 39).

As per claim 32, Walker et al., further disclose making an entry in a script compliance incentive system ("strongly incentive"; col.3, lines 11 – 15).

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As per claims 33, 50, and 51, Walker et al., teach a method of performing quality analysis on a plurality of interactions, each one of the interactions involving at least one agent, the method comprising at least the following:

- obtaining data representing at least a given one of the interactions ("the POS terminal records a phrase spoken by the operator"), each one of the interactions having a respective actual duration parameter associated therewith ("predetermined time"; col.9, lines 5, and 6; col.7, lines 46 - 60);

- obtaining data representing at least one expected duration parameter applicable to at least the given one of the interactions ("time duration of the verbal message"; col.7, lines 46 - 60);

- for the least the given one of the interactions, comparing the actual duration of the given one interaction to the expected duration parameter, and dispositioning at least the given one interaction based on the comparing (below a predetermined threshold, then an appropriate prompt is transmitted"; col.15, lines 6 - 17).

As per claim 34, Walker et al., further disclose receiving a respective voice record of the given one of the interactions ("plurality of records"; col.6, lines 53 - 57).

As per claim 35, Walker et al., further disclose receiving a respective voice record of the given one of the interactions involving an agent physically located at a caller center (cashier of the POS terminal"; col.3, lines 32 - 35: Abstract, lines 1, and 2).

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As per claim 36, Walker et al., further disclose receiving a respective voice record of the given one of the interactions involving an agent physically located remotely from a call center ("remote computing device from company headquarters"; col.14, lines 43 – 47).

As per claim 37, Walker et al., further disclose receiving data representing at least one expected duration parameter applicable to at least one interaction involving at least one call center that is processing the at least one interaction on behalf of at least one client of the at least one call center ("POS terminal"; col.7, lines 46 – 60).

As per claim 38, Walker et al., further disclose categorizing at least some of the plurality of interactions, and associating a respective expected duration parameter ("the prompted may be selected from a set of prompt based on predetermined duration") with each category ("allowing prompts to be customized to variety of situations such as suggestive offers for different products for which the customer is eligible"; col.5, lines 46 – 60; col.7, lines 12 – 40; col.8, line 64 – col.9, line 10).

As per claim 39, Walker et al., further disclose categorizing at least some of the plurality of interactions includes defining respective categories for at least one of inbound telemarketing calls, outbound telemarketing calls, customer service calls, and technical support calls ("good or services"; col.5, lines 41 – 45; col.3, lines 1 – 5).

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As per claim 40, Walker et al., further disclose comparing the actual duration of the given one interaction to an expected duration parameter associated with a category to which the given one interaction is assigned (activity rate is a below a predetermined threshold”; col.15, lines 6 – 17).

As per claim 41, Walker et al., further disclose determining the comparing indicates a quality control issue with an agent processing the given interaction (“the cashier does not properly provide the verbal message”; col.15, lines 21 – 25).

As per claim 42, Walker et al., further disclose determining the comparing indicates a fraud issue with an agent processing the given interaction (“preventing the cash drawer from opening and preventing money from being withdrawn”; col. 9, lines 19 – 25).

As per claim 43, Walker et al., further disclose assigning the given interaction for evaluation because the actual duration of the given interaction is less than the pre-defined standard applicable to the at least one interaction (“below a predetermined threshold”; col.6, lines 6 – 20).

As per claim 44, Walker et al., further disclose assigning the given interaction for evaluation because the actual duration of the given interaction exceeds a pre-defined

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standard applicable to the given interaction ("not below a predetermined threshold"; col.6, lines 6 – 20).

As per claim 45, Walker et al., further disclose assigning the given interaction for evaluation because the actual duration of the given interaction is less than the pre-defined threshold applicable to the given interaction ("below a predetermined threshold"; col.6, lines 6 – 20).

As per claim 46, Walker et al., further disclose assigning the given interaction for evaluation because the actual duration of the given interaction exceeds a pre-defined threshold applicable to the given interaction ("not below a predetermined threshold"; col.6, lines 6 – 20).

As per claim 47, Walker et al., further disclose assigning the given interaction for evaluation because the actual duration of the given interaction falls outside of a pre-defined range applicable to the given interaction ("not within a predetermined range"; col. 9, lines 43 - 45).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al., (US Patent 6,567,787), in view of Surace et al., (US Patent 6,144,938).

As per claim 6, and 25, Walker et al., do not specifically teach conducting the at least one voice interaction at least in part on at least one Internet.

Surace et al., teach an application such as Internet that provides access to email (col.8, lines 51 – 53).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to use Internet communication as taught by Surace et al., in Walker et al., because that would make the network communication more flexible.

7. Claims 11, and 13 - 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al., (US Patent 6,567,787), in view of Avi (US Patent 5,66,157).

As per claim 11, Walker et al., do not specifically teach Converting the at least one voice interaction into at least one digital signal comprising at least one spectral representation of the at least one voice interaction; comparing the at least one digital signal to at least one reference standard that includes at least one known vocabulary, and matching the at least one digital signal to at least one of words and phrases contained in the at least one reference standard.

Avi discloses pick- up the acoustic signals, and processes the signals by means of digital and spectral analysis techniques. The output of the analysis subsystem is compared in the pattern comparator subsystem with selected predetermined words in memory. The templates include brief and easily recognizable terse expressions, some of which are single words (col.10, line 64 – col.11, line 10).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to convert said voice interaction into digital signal comprising a spectral representation as taught by Avi in walker et al., because that would help recognize different sounds, accents for word clarification.

As per claim 13, Walker et al., further disclose causing at least action to be taken includes transmitting at least one signal to the at least one agent ("sound transmitted to headphone"; col.2, lines 1 – 9).

As per claim 14, Walker et al., further disclose transmitting at least one signal to at least one reviewing authority (" billing system in communication with the operator database"; col.6, lines 24 – 39).

As per claim 15, Walker et al., further disclose making an entry in a script compliance incentive system ("strongly incentive"; col.3, lines 11 – 15).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Shanmbaugh et al., (US Patent 6,970,821) teach a method of crating scripts by translating agent/customer conversation.

Walker et al., (US Patent 5,926,796) teach a method and apparatus for selling subscriptions to periodicals in a retail environment.

McIntosh (US Patent 6,401,066) teaches an automated third party verification system.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leonard Saint-Cyr whose telephone number is (571) 272-4247. The examiner can normally be reached on Mon- Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richemond Dorvil can be reached on (571) 272-7602. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LS
04/13/07



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SUPERVISORY PATENT EXAMINER